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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Innovation Law Lab, *et al.*,

Plaintiffs,

v.

Alejandro Mayorkas, *et al.*,

Defendants.

CASE NO.: 3:19-CV-00807-RS

**PLAINTIFFS' ADMINISTRATIVE
MOTION TO SET CASE MANAGEMENT
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1 Pursuant to Civil Local Rule 7-11, Plaintiffs file this administrative motion to set a case
2 management conference (“CMC”) on November 17, 2022 at 10:00 a.m. or as soon thereafter as the
3 Court may be available. The parties have been involved in informal settlement negotiations for more
4 than a year, but several significant issues remain unresolved. Plaintiffs believe that a CMC is necessary
5 to explore the possibility of referring the case to a mediator who could assist the parties in their
6 settlement efforts. Defendants oppose this motion.

7 Plaintiffs are individual immigrants and organizations that advocate for immigrants. They filed
8 this action on February 14, 2019, to challenge the Trump administration’s “Migrant Protection
9 Protocols” (“MPP”), which created a system to return certain immigrants to Mexico while they
10 awaited their immigrant court hearings. The Court issued a preliminary injunction against MPP on
11 April 8, 2019, which the government appealed. The Supreme Court ultimately granted certiorari before
12 the Biden administration issued a memorandum terminating MPP. On the basis of that termination
13 memorandum, the Supreme Court ordered the Ninth Circuit to order this Court to vacate its
14 preliminary injunction as moot. (ECF No. 129.) On August 6, 2021, after the Ninth Circuit’s mandate
15 and order, this Court vacated as moot the preliminary injunction and issued an order to show cause as
16 to why this entire action should not be dismissed as moot. (ECF No. 131.)

17 Since the Court’s issuance of the order to show cause, the court has granted the parties several
18 joint requests to hold the order to show cause in abeyance in order to allow the parties to meet and
19 confer regarding outstanding issues in the case, including whether settlement is possible and how this
20 case should proceed in light of the related litigation in *Texas v. Biden*, No. 2:21-cv-0067 (N.D. Tex.),
21 (ECF Nos. 132, 133, 135, 136, 137, 138, 140, 141, 142, 143, 144.) For more than a year, the parties
22 have engaged in informal settlement negotiations and have made progress toward a possible settlement
23 of the case. (Rabinovitz Dec. ¶ 2.) However, the process has taken longer than anticipated, with often
24 significant delays in the time it has taken Defendants to respond to Plaintiffs’ settlement
25 communications. (*Id.* ¶ 3.)

26 On October 11, 2022, Plaintiffs sent Defendants a response to their latest settlement proposal,
27 dated September 14, 2022. (Rabinovitz Dec. ¶ 4.) Plaintiffs’ response stated that Defendants’ latest
28

1 proposal was largely acceptable but described two issues that required clarification. (*Id.*) Given the
 2 urgent need to provide relief to the individual plaintiffs, and in order to avoid further delay, Plaintiffs
 3 asked for a meeting with the government decision makers to be scheduled within two weeks, to resolve
 4 these remaining issues. (*Id.*) Defendants, through their counsel, Erez Reuveni, said that they were
 5 unwilling to schedule such a meeting until they had prepared a response to Plaintiffs' latest
 6 communication, but that such a response would be forthcoming. (*Id.* ¶ 5). To date, Defendants have
 7 not provided such a response, nor have they committed to a timeline for providing one. (*Id.*)

8 Given the length of time that has elapsed since the parties began discussing settlement and
 9 Plaintiffs' interest in seeking the expeditious resolution of those settlement discussions, Plaintiffs now
 10 seek a CMC in order to explore the possibility of referring this case for formal mediation. Plaintiffs
 11 proposed this possibility to Defendants on November 3, 2022. (Rabinovitz Dec. ¶ 6.) On November
 12 8, 2022, Plaintiffs then sought Defendants' position on this administrative motion to set a CMC. (*Id.*)
 13 On November 9, 2022, Defendants indicated that they oppose this motion. (*Id.* ¶ 7.) Plaintiffs believe
 14 that formal mediation may be necessary for the parties to promptly resolve the remaining settlement
 15 issues in this case.

16 The parties have not previously articulated their positions on an ADR process because, as a
 17 result of the appellate and Supreme Court litigation in this case, the parties never filed a Joint Case
 18 Management Statement ("JCMS"), and the Court never convened an initial CMC. The Court last
 19 issued an order holding the initial CMC in abeyance on January 21, 2021. (ECF No. 125.) Plaintiffs
 20 do not believe that the filing of a JCMS is necessary, given that the scope of the CMC they request
 21 will likely be limited to discussion of possible mediation.

22 For the foregoing reasons, Plaintiffs request that the Court set this case for a CMC on
 23 November 17, 2022 at 10:00 a.m. or as soon thereafter as the Court is available.

24
 25
 26 Dated: November 10, 2022

Respectfully submitted,

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